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IN THE

Supreme Court of the United States

October Term, 1957

No. 489

LESTER F. WILSON,

Petitioner,

vs.

MUENCH-KREUZER CANDLE CO., INC.,

Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

Foreword.

Respondent concedes that petitioner properly invokes jurisdiction but denies that the "Questions Presented" stated in the petition are raised in this case.

Respondent's Statement of the Case.

This is an ordinary patent case in which the patent in suit was held invalid. It is the only case ever filed involving the patent and obviously no conflict of decision exists.

None of the grounds proscribed by Rule 19 covering reviews on certiorari are involved.

That patent in suit covers a candle. It differs from a conventional candle only in having differently colored aniline dyes placed in different sections of the wick which upon burning color the drippings in different colors.

That patent was held infringed by the District Court by a candle in which the dyes were placed not on the wick but on the core of the candle.

The Court of Appeals noted that respondent itself had manufactured a candle having a core colored differently from the body long prior to petitioner's invention (see note 11, p. 7, Appx. to Petition). Furthermore, both the German patent to Housamann, Exhibit A-11, and the British patent to Sterry, Exhibit A-7 [R. 359], disclose in the prior art a core or a wick dyed differently than the exterior of the candle. What the Court of Appeals held was simply that it was not invention simply to string a plurality of such candles together.

In so holding, the Court of Appeals applied the well-settled rule of law that mere duplication of parts is not invention.

Dunbar v. Meyers, 94 U. S. 187;

Slawson v. Grand Street Railway, 107 U. S. 649;

Nestle-Le Mur Co. v. Eugene, Ltd., 55 F. 2d 854 (6 Cir.);

Blackmore v. Ford Motor Co., 56 F. 2d 806;

Milner v. Voss, 48 Fed. 832.

While the Court of Appeals did not cite the cases above, they established the rule that mere multiplication of parts is not invention, and each of these cases was decided long prior to any of the cases cited by the Court

of Appeals in footnote 10 of its opinion (Appx. to Petition, p. 7). Thus we see that no different result is involved whether we apply either ancient or modern patent law, and the question of whether Section 103 of the Patent Act of 1952 changed the standard of invention does not arise.

Argument.

As pointed out, *supra*, the Court of Appeals has held that if we "put one short candle after another * * * we haven't produced anything worthy of a patent." This ruling clearly follows the well-established law that mere duplication is not invention, which states the applicable rule under the law long before any of this Court's recent cases and long before the Patent Act of 1952.

The questions raised by petitioner thus simply do not arise on this record. Duplication is not invention under any standard of invention.

Furthermore, the Court of Appeals did not say that it would decide this case differently were it not for the recent decisions of this Court. It merely observed that it *might* so decide. Surely this is no ruling on the point.

Finally, we cannot pass petitioner's assertion, alluding to "the old practice, particularly in candles for Christmas, of making a candle with two colors, say a white core and a red jacket," that the Court was going outside of the record. The Court had its colors reversed; but the Star Pillar candle sold by defendant since 1940 has a red core and white jacket [see Exs. F and C and footnote 11 to the Court of Appeals' Opinion, p. 7 of the Appx. to the Petition].

Thus not only is petitioner raising a question not presented by the record but is also misstating the record, and like others who have attempted to raise this false issue should receive a speedy denial of the writ. (*Tatko Bros. Slate Co., Inc. v. Vermont Slate Co., Inc.*, No. 444, Oct. Term, 1956, ... U. S. ....., 1 L. Ed. 2d 123.)

Conclusion.

The petition for certiorari presents a question not raised by the record and should be denied.

Respectfully submitted,

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